Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	WT Docket No. 08-165
Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance	)	

COMMENTS OF THE COUNTY OF CLEAR CREEK, STATE OF COLORADO

These Comments are filed by Clear Creek County, Colorado to urge the Commission to deny the Petition filed by CTIA. CTIA's Petition is without merit and without basis in law or fact. Clear Creek County also joins in the Comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA") in response to CTIA's Petition.

We want to emphasize that Congress made it perfectly clear that the time frame for responding to applications for wireless facility sitings under local government regulations is determined by reference to the nature of the application. Section 332(c)(7)(B)(ii) provides that local governments act on requests "within a reasonable time period, taking into account the nature of the request." This Congressional decision necessarily required that the statute not mandate fixed time periods for action because Congress could have no idea what the varying local regulations and site-specific issues were or would be. It would contradict the statute were the FCC to mandate a fixed time period and impose a remedy for violating that mandate, where Congress clearly intended fluidity.

It appears that CTIA's members simply are unwilling to accept their responsibility to enforce their rights under existing law (federal and local) and, instead, prefer to shift the burden of meeting those members' perceived needs onto all local governments. In so doing, CTIA would give its members a "preferred" status over all other citizens and organizations seeking land use approvals who must stand aside to permit CTIA's members' applications to be processed to meet the proposed standards.

To assist the Commission in its evaluation, below are details specific to the wireless

facilities siting process and experiences in Clear Creek County.

1. LEGAL REQUIREMENTS FOR FACILITY SITING

In some cases applications for facility siting may be addressed administratively, without the need for public hearings; others require public hearings with prescribed period of public notice of the hearings. In Clear Creek County, the applicable zoning district where the facility is proposed will determine whether a facility siting is addressed administratively, or whether notice and public hearings are required. These requirements are found in the *Clear Creek County Zoning Regulations, Section 5. Commercial Districts, Section 7. Mining Districts, Section 9. Planned Development, Section 18. Telecommunications Regulations, and Section 22. Obsolete Zoning Districts.* (Our zoning regulations are on our website, **www.co.clear-creek.co.us**.)

In Clear Creek County, most of the Commercial zoning districts, our Industrial District, and all of our Mining zoning districts allow telecommunications facilities as a permitted principal use when they are supported by a legally existing building or structure. For such facilities, the applicant shall submit a site plan and demonstrate that the proposed facility is in conformance with the Performance Standards that are established in Section 18. *Telecommunications Regulations*. This is an administrative process that takes approximately four (4) to five (5) weeks to complete.

When a telecommunications facility is proposed in a zoning district that does not permit such facilities, the applicant may apply for a Planned Development rezoning. A rezoning request must be reviewed by the Planning Commission, and a recommendation by the Planning Commission to the Board of County Commissioners must be made, through a public hearing, prior to being considered by the Board of County Commissioners for approval or denial in another public hearing. Clear Creek County is required to publish a public notice in a newspaper of general circulation a minimum of fourteen (14) days prior to the Planning Commission public hearing. Further it is required to notify adjacent property owners and applicable referral agencies a minimum of twenty-one (21) days prior to the Planning Commission public hearing. The same must be accomplished prior to the Board of County Commissioners' public hearing. The purpose of this rezoning process is to assure that facilities and related telecommunications infrastructure are designed to meet standards outlined in *Section 18* such as, but not limited to, taking advantage of existing land forms and vegetation to aid in screening and blending, to assure improvements avoid dominant silhouettes on ridge lines, preservation of view corridors, to evaluate whether the proposal is capable of collocation. Standards such as these, and others, ensure that the rights of the applicant and the public are preserved.

It is important to note that these processes are not unique to telecommunications sites but must be followed by all land use applicants in the County's jurisdiction.

2. NUMBER OF APPLICATIONS AND OUTCOMES

Between the years of 2006 and 2008, we have had six (6) applications for approval of wireless telecommunications facilities. Of these, one (1) request was for a collocation on existing facilities, one (1) was for a new facility on an existing structure like a sign tower or existing structures, and four (4) were for infrastructure improvements to existing facilities such as additional back-up generator power.

For those facilities proposed in zoning districts that allow such facilities as a permitted principal use, the average time between filing of an application and administrative approval has been 4 to 5 weeks. Where an amendment to an existing Planned Development zoning district was requested for facility/infrastructure improvements, the average time between filing and a final decision has been between 1 to 3 months, due to the above described public notification requirements. No rezoning requests for new telecom facilities have been proposed in the past five (5) years.

With respect to one application for Planned Development rezoning in 2001, there were circumstances of delay. This delay of approximately 1 year was because of incomplete submittals submitted by the applicant, and because of complications due to other aspects of the rezoning request not related to the telecom facility itself. Delays and complications were related to other uses of the subject land which were proposed by the applicant, including lodging and billboard signage.

In cases when a Planned Development rezoning request or an amendment to an existing Planned Development are applied for by a telecommunications facility applicant, a "reasonable time period, taking into account the nature of the request" is essentially longer than when an administrative application as a permitted principal use is applied for because notice and public hearings are required to ensure that the rights of the applicant, and the rights of the general public are preserved with respect to screening, blending with the natural and built environment, collocation consideration, and conformance with other applicable state and local land use regulations.

Therefore, the proposed time limits are not practical for these types of land use requests. If we were compelled to meet the proposed time limits, we would have no choice but to deny the applications before we were even in a position to evaluate the merits; that cannot be useful to us or to applicants.

3. CONCLUSION

While my department caused delay in processing land use applications occasionally (speaking of land use applications generally, not speaking about telecommunications sites applications), the approval process is frequently delayed or interrupted for a myriad of reasons, almost always because of the applicant or 3rd persons over whom the applicant may have no control (for example, the landowner when the applicant is a lessee). The

petition lists some delays alleged to have been experienced, but we cannot comment about them or how they compare to our experience because there was no information about them (and for that same reason we respectfully submit you would not be justified in taking any action based on the allegations).

It is our observation, however, that the most common "delay," as perceived by the applicant, is no delay at all. Even though we hand out checklists to guide land use applicants it is common for them to file applications which are in one or another way incomplete, sometimes incomplete in every way possible. We cannot and do not process incomplete applications (beyond reviewing them for completeness and informing the applicant what is missing). If you should impose some uniform standard it must clearly be measured from the time a complete application is submitted.

Ultimately, however, there is no way to specifically define "reasonable" because each site that is proposed for facility siting is different from any other in its site characteristics of the natural and built environment. That may be the very reason Congress used "reasonable" as its standard.

In conclusion, the Commission does not have the authority to issue the declaratory ruling requested by CTIA because it would be contrary to Congress's intentions. Further, the current process for addressing land use applications based on local regulation ensures the rights of citizens in our community to govern themselves and ensures that the appropriate development of the community is properly balanced with the interests of all applicants. The system works well and there is no evidence to suggest that the Commission should grant a special waiver of state and local law to the wireless industry. Any perceived difficulties experienced by wireless providers can and are adequately addressed through the electoral process in each individual community and the courts. Federal agency intrusion is neither warranted nor authorized.

Respectfully submitted,

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